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09/977,331	10/16/2001	Owen M. Patterson	7021	4500		
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SHLESINGER, ARKWRIGHT & GARVEY LLP			EXAMI	EXAMINER		
3000 South Eads Street Arlington, VA 22202			GRAHAM, MARK S			
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			3711			

DATE MAILED: 02/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Applicant(s) PATTERSON, OWEN M.				منتص		A
## Deficie Action Summary Examiner Mark S. Graham 3711 The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply			Application No. Applicant(s)			
## Examiner Mark S. Graham 3711 ## The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. ■ SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. ■ SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. ■ SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MINING THE MAILING DATE OF THIS COMMUNICATION. ■ SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) from the mailing date of this communication. The mailing date of this communication is the property of the display and will expire SX (S) MAINTH(S) from the mailing date of this communication. The mailing date of this communication, were if timely filed, may reduce any search and part of the mailing date of this communication. The mailing date of this communication, were if timely filed, may reduce any search part of the mailing date of this communication. The mailing date of this communication, were if timely filed, may reduce any search part of the mailing date of this communication. The mailing date of this communication, were if timely filed, may reduce any search part of the mailing date of the communication. The search part of the communication is monething date of the communication. ### Responsive to communication for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. ### Disposition of Claims ### Application is in application in or allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. ### Claims(s) 1.22 is/are pending in the application or allowance except for formal matters, prosecution as to the merits of the pro			09/977,331	F	PATTERSON, OWEN M.	
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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be without of the provisions of 3/CPR 1.736(b), in no event, however, may a reply be timely filed Extensions of time may be available under the provisions of 3/CPR 1.736(b), in no event, however, may a reply be timely filed If the period for reply seporated above is less than tritly (30) days, a reply within the statubery provided in the period for reply within the set or extended period or reply set of formal matters, prosecution as to the merits is closed in accordance with the practice under Expander CO22. 1) Expanded for the period for reply replaced for formal matters, prosecution as to the merits is closed in accordance with the practice under Expander CO24. 2) Claim(s) 1.22 is/are pending in the application. 4) Claim(s) 1.22 is/are pending in the application. 4) Claim(s) 1.22 is/are pending in the application. 4) Claim(s) 1.22 is/are pending in the application of control of claims (s) 1.22 is/are rejected. 7) Claim(s) 1.22 is/are pending for the provision a			ears on the cover s	heet with the cor	respondence a	ddress
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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (e) the invention was described in-
- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1, 2, 6, 7 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Wagner. Wagner discloses the claimed structure and may be used for the claimed purpose. Regarding claim 2, as can be seen in the cross-section in Fig. 6 the truncated cone has several flat surfaces.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4, 5, 10-16, 18, 19, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner. Wagner discloses the claimed device with the exception of the claimed dimensions and weight. However, the exact weight and dimensions of Wagner's device would obviously have been dependent on the durability desired and the number of golf balls one wished to be able to collect in a single pass. Absent some unexpected results the claimed dimensions would not have been unobvious to the ordinarily skilled artisan.

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Claims 3, 8, 9, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In response to applicant's argument that Wagner is not anticipatory because it is intended to be used for a different purpose, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art.

See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Applicant's arguments have been considered by are not persuasive. Wagner's disclosure is enabling as required. The case law cited by applicant would appear to be relevant if the disclosure were not enabling and therefore it wasn't clear if it represented anticipatory art. Here the reference is clearly enabling for its intended use and as per *Casey* above that is all that is required for for anticipation.

Regarding the *In re Gordon* arguments it should be noted that the Wagner device is not disclosed as part of a set on an axle but in and of itself as a separate element so no modification of the disclosed device is required.

Regarding the claim 2 argument, the outermost portion of Wagner's central portion alone forms a truncated cone with a flat surface.

Concerning the claim 7 argument, Wagner's bore extends from the top to the bottom portion and at either entrance to the bore a shoulder is formed where the bore ends.

With regard to claim 17, as can be seen in Fig. 2 of Wagner the top and bottom portions are mirror images. That these portions have other elements added to them for connection to other discs does not affect the mirroring of the top and bottom portions themselves.

Finally, it is the examiner's position that *Schreiber* merely supports Casey with regard to the proposition that if the prior art structure is capable of performing the intended use, then it meets the claim. Wagner's device is clearly capable of performing as a target for a golf ball.

Swanson has been cited for interest because it discloses another device which meets the structural limitations of at least some of the claims and is capable of performing as a target for a golf ball.

Applicant's arguments filed 12/10/02, 10/30/02 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Mark S. Graham at

telephone number 703-308-1355.

MSG 2/14/03 Mark S. Graham Primary Examiner

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